IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MRS. JUSTICE K.HEMA

THURSDAY, THE 20TH SEPTEMBER 2007 / 29TH BHADRA 1929

MFA.No. 1445 of 2001(C)

OPMV.216/1995 of MOTOR ACCIDENT CLAIMS TRIBUNAL, KOLLAM
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APPELLANT:

GOPALAKRISHNA PANICKER, MANGALYA,
VADAYATTUKOTTA, KOLLAM.

BY ADV. DR.K.P.SATHEESAN
SRI.K.K.GOPINATHAN NAIR

RESPONDENTS:
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1. THE MANAGING DIRECTOR, KERALA STATE ROAD TRANSPORT CORPORATION, THIRUVANANTHAPURAM.

2. SANKARAN BHASKARAN, THONIVALAPPIL VEEDU, VALLACHIRA VILLAGE, TRISSUR TALUK, TRISSUR DISTRICT.

3. M.K.PRABHAKARA PANICKER, PROPRIETOR, QUILON SANITARY EQUIPMENT STORE, BEACH ROAD, KOLLAM.

4. THE DIVISIONAL MANAGER, UNITED INDIA INSURANCE COMPANY LTD. KOLLAM.

BY
SRI.M.V.THAMBAN
SRI.M.S.PATTALI
SRI.T.VINOD KUMAR
SHRI.JOHNSON P.JOHN, SC, KSRTC

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 20/09/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J.B.KOSHY & K.HEMA,JJ.

M.F.A.NO. 1445 OF 20O1

Dated this the 20th day of September, 2007

JUDGMENT

Koshy, J.

The appellant filed application for compensation alleging that on 19.8.1994 while he was driving a Maruti car KRU 9333 from Kollam to Ernakulam through the National Highway, a stage carriage Super Fast Bus coming in a negligent manner hit the Maruti car and the right side portion of both the vehicle were damaged and according to the appellant, the accident was occurred solely due to the negligence of the driver of the KSRTC bus. His car was dragged for 15 meters after the hit, which shows that the driver of the KSRTC bus was negligent. But, even though a criminal case was registered against the driver of the KSRTC bus by the police, later that was referred. A private complaint filed by the petitioner against the KSRTC bus driver was also entered in acquittal. In view of the above, the Tribunal was of the opinion that negligence on the part of the bus driver was not proved. It is the case of the petitioner that due to the after effect of the accident, the petitioner was not able to pursue the criminal case and gather evidence. But the finding in the

criminal case is not binding on the Tribunal. Before the Tribunal, PW4, an independent witness, was examined and he deposed that the accident occurred due to the negligence of the driver of the KSRTC bus. AMVI report, Exhibits A2 and A3 in respect of Maruti car as well as the bus would show that the front side of both the vehicles were damaged. It shows that it was head on collision. In head on collision, the apex court has held that negligence of the driver of both vehicles can be presumed in the absence of specific evidence. (See ***Binoy Kumar Dugar*** v. ***Bidyadhar Dutta*** (AIR 2006 SC 1255 (para12)). AMVI conducted an inspection and Exhibits A2 and A3 reports were filed showing damages to the front side of both vehicles. The position of the car after the hit also cannot be determined. In the above circumstances, we are of the view that the apportionment of negligence comes equally between the appellant as well as the driver of the KSRTC bus. With regard to the amount of compensation, the Tribunal has not considered the evidence for calculating the amount of compensation to be paid. Therefore, we set aside the order of the Tribunal and remand the matter for determination of compensation after holding that the negligence can be attributed equally between the driver of the car as well as the

driver of the KSRTC bus. The parties may appear before the Tribunal on 17.12.2007. Both parties are free to adduce additional evidence regarding the quantum of compensation.

J.B.KOSHY, JUDGE

K.HEMA, JUDGE

vgs.

J.B.KOSHY & K.HEMA, JJ.

M.F.A.NO.1445 OF 2001

JUDGMENT

20.9.2007